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SESSION 2023

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Short Title: Energy Choice/Solar Decommissioning Rqmts.

(Public)

Sponsors:

Referred to:

February 16, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO (I) LIMIT CITIES AND COUNTIES FROM PROHIBITING CONSUMER
3 CHOICE OF ENERGY SERVICE BASED UPON THE TYPE OR SOURCE OF ENERGY
4 TO BE DELIVERED AND (II) REQUIRE RESPONSIBLE DECOMMISSIONING OF
5 NEWLY SITED UTILITY-SCALE SOLAR PROJECTS UPON CESSATION OF
6 OPERATIONS.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. PRESERVING CHOICES FOR CONSUMERS**

10 **SECTION 1.(a)** Article 8 of Chapter 160A of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 160A-203.3. Limitations on regulation of energy choice.**

13 (a) A city shall not adopt an ordinance that prohibits, or has the effect of prohibiting,
14 either of the following:

15 (1) The connection, reconnection, modification, or expansion of an energy service
16 based upon the type or source of energy to be delivered to an individual or any
17 other person as the end-user of the energy service.

18 (2) The sale, purchase, or installation of an appliance utilized for cooking, space
19 heating, water heating, or any other appliance included under the definition of
20 "white goods" pursuant to G.S. 130A-290(a).

21 (b) As used in this section, "energy service" means the energy source that a consumer
22 may choose to use to illuminate, heat, or cool buildings; produce hot water; operate equipment;
23 operate appliances; or any other similar activities, where the energy source is derived from one
24 or more of a variety of sources such as natural gas, renewable gas, hydrogen, liquified petroleum
25 gas, renewable liquified petroleum gas, or other liquid petroleum products and that is delivered
26 to the consumer by an entity legally authorized to provide such service or electricity that is
27 derived from one or more sources of electric generation and is delivered to the consumer by an
28 entity legally authorized to provide such service and the distribution of the electricity occurs
29 according to the territorial rights established by G.S. 62-110.2, 160A-331.2, or 160A-332. For
30 purposes of this section, the terms "renewable gas" and "renewable liquified petroleum gas" shall
31 mean gas derived from a renewable energy resource, as that term is defined by
32 G.S. 62-133.8(a)(8).

33 (c) Nothing in this section shall be construed to (i) limit the ability of a city to choose the
34 energy service for property owned by the city, (ii) prohibit a city from recovering reasonable



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1 costs associated with reviewing and issuing a permit, (iii) affect the authority of a city to manage
2 or operate a city-owned utility, including a city's authority to require persons residing within their
3 jurisdictions to obtain energy service from a city-owned utility or a joint municipal power agency
4 of which they are a member, or (iv) impair a contract executed pursuant to G.S. 160A-322 prior
5 to the effective date of this section for the supply of electric service.

6 (d) Notwithstanding any authority granted to municipalities to adopt local ordinances,
7 any local ordinance that prohibits or has the effect of prohibiting the activities described in
8 subsection (a) of this section shall be invalid."

9 **SECTION 1.(b)** Article 6 of Chapter 153A of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 153A-145.11. Limitations on regulation of energy choice.**

12 (a) A county shall not adopt an ordinance that prohibits, or has the effect of prohibiting,
13 either of the following:

14 (1) The connection, reconnection, modification, or expansion of an energy service
15 based upon the type or source of energy to be delivered to an individual or any
16 other person as the end-user of the energy service.

17 (2) The sale, purchase, or installation of an appliance utilized for cooking, space
18 heating, water heating, or any other appliance included under the definition of
19 "white goods" pursuant to G.S. 130A-290(a).

20 (b) As used in this section, "energy service" means the energy source that a consumer
21 may choose to use to illuminate, heat, or cool buildings; produce hot water; operate equipment;
22 operate appliances; or any other similar activities, where the energy source is derived from one
23 or more of a variety of sources such as natural gas, renewable gas, hydrogen, liquified petroleum
24 gas, renewable liquified petroleum gas, or other liquid petroleum products and that is delivered
25 to the consumer by an entity legally authorized to provide such service or electricity that is
26 derived from one or more sources of electric generation and is delivered to the consumer by an
27 entity legally authorized to provide such service and the distribution of the electricity occurs
28 according to the territorial rights established by G.S. 62-110.2, 160A-331.2, or 160A-332. For
29 purposes of this section, the terms "renewable gas" and "renewable liquified petroleum gas" shall
30 mean gas derived from a renewable energy resource, as that term is defined by
31 G.S. 62-133.8(a)(8).

32 (c) Nothing in this section shall be construed to (i) limit the ability of a county to choose
33 the energy service for property owned by the county, (ii) prohibit a county from recovering
34 reasonable costs associated with reviewing and issuing a permit, or (iii) affect the authority of a
35 county to manage or operate a county-owned utility, including a county's authority to require
36 persons residing within their jurisdictions to obtain energy service from a county-owned utility.

37 (d) Notwithstanding any authority granted to counties to adopt local ordinances, any local
38 ordinance that prohibits or has the effect of prohibiting the activities described in subsection (a)
39 of this section shall be invalid."

40 41 **PART II. DECOMMISSIONING OF UTILITY-SCALE SOLAR PROJECTS UPON** 42 **CESSATION OF OPERATIONS**

43 **SECTION 2.(a)** Article 9 of Chapter 130A of the General Statutes is amended by
44 adding a new Part to read:

45 "Part 2J. Management of Solar Energy Equipment.

46 **"§ 130A-309.240. Decommissioning and restoration requirements for utility-scale solar**
47 **projects; recycling of project components required; financial assurance**
48 **requirements.**

49 (a) Definitions. – For purposes of this Part, the following definitions apply:

50 (1) "Cessation of operations" means a utility-scale solar project has not produced
51 power for a period of 12 months. This 12-month period shall not, however,

1 include a period in which the (i) project fails to produce power due to an event
2 of force majeure or (ii) owner has retained legal control of the project's
3 footprint and has commenced rebuilding the facility.

4 (2) "Expansion" or "expanded," when used in reference to a utility-scale solar
5 project, means adding 2 megawatts AC (MW AC) or more of directly
6 connected solar energy generating capacity to the local or regional electrical
7 grid with the ability to deliver power to the electrical grid, or increasing the
8 ability of the project to deliver power to the electrical grid by thirty-five
9 percent (35%), whichever is larger.

10 (3) "Photovoltaic module" or "PV module" means the smallest nondivisible,
11 environmentally protected assembly of photovoltaic cells or other
12 photovoltaic collector technology and ancillary parts intended to generate
13 electrical power under sunlight, which is part of a utility-scale solar project.

14 (4) "Rebuild" or "rebuilt" when used in reference to a utility-scale solar project
15 means a utility-scale solar project for which more than fifty percent (50%) of
16 the original photovoltaic modules have been replaced with a different type of
17 photovoltaic module or other fuel source and the project is deemed to be new
18 for income tax purposes.

19 (5) "Recycle" means the processing, including disassembling, dismantling, and
20 shredding of PV modules or other equipment from utility-scale solar projects,
21 or their components, to recover a usable product. Recycle does not include
22 any process that results in the incineration of such equipment. PV modules
23 determined to be hazardous shall comply with applicable hazardous waste
24 requirements even when recycled.

25 (6) "Utility-scale solar project" means a ground-mounted PV, concentrating PV
26 (CPV), or concentrating solar power (CSP or solar thermal) project capable of
27 generating 2 megawatts AC (MW AC) or more directly connected to the local
28 or regional electrical grid with the ability to deliver power to the electrical
29 grid. The term includes the solar arrays, accessory buildings, battery storage
30 facilities, transmission facilities, and any other infrastructure necessary for the
31 operation of the project. For purposes of this section, a utility-scale solar
32 project does not include renewable energy facilities owned or leased by a retail
33 electric customer intended primarily for the customer's own use or to offset
34 the customer's own retail electrical energy consumption at the premises or for
35 net metering.

36 (b) Decommissioning Requirement. – The owner of a utility-scale solar project shall be
37 responsible for proper decommissioning of the project upon cessation of operations and
38 restoration of the property in compliance with subdivision (3) of this subsection, including all
39 costs associated therewith, no later than one year following cessation of operations. The owner
40 shall notify the Department within 30 days of cessation of operations, which notice shall include
41 a detailed description of the steps to be taken to properly decommission the project and for
42 restoration of the site. At a minimum, an owner shall take all of the following steps in
43 decommissioning a project:

44 (1) Disconnect the solar project from the power grid.

45 (2) Remove all equipment from the solar project, and collect and ship equipment
46 for reuse, or recycle all of the components thereof practicably capable of being
47 recycled, including the PV modules; the entire solar module racking system;
48 aboveground electrical interconnection and distribution cables that are no
49 longer deemed necessary; subsurface cable no longer deemed necessary; any
50 metal fencing; electrical and electronic devices, including transformers and
51 inverters; and energy storage system batteries, as that term is defined under

1 subsection (a) of this section. Components that will not be shipped for reuse,
2 are incapable of being recycled, and do not meet the definition of hazardous
3 waste shall be properly disposed of in (i) an industrial landfill or (ii) a
4 municipal solid waste landfill. PV modules that meet the definition of a
5 hazardous waste shall comply with hazardous waste requirements for
6 recycling and disposal as applicable.

7 (3) Restore the property (i) as nearly as practicable to its condition before the
8 utility-scale solar project was sited or (ii) to an alternative condition agreed
9 upon in a written contract or lease agreement between the landowner and the
10 project owner. A copy of the agreement signed by both parties shall be
11 provided to the Department prior to decommissioning. The condition of the
12 property shall otherwise comply with any applicable statutory requirements,
13 rules adopted thereunder, and requirements in local ordinance. Land that was
14 cleared of trees for the solar project may be revegetated or reforested with
15 seedlings.

16 (c) Decommissioning Plan. – The owner of a utility-scale solar project shall submit a
17 decommissioning plan to the Department for approval, which shall be prepared, signed, and
18 sealed by a professional engineer licensed in the State and shall contain all of the following
19 information:

20 (1) The name, address, and contact information for the owner of the project, and
21 name, address, and contact information for the landowner of the property on
22 which the project is sited, if different than the owner.

23 (2) A narrative description of how the decommissioning will be conducted,
24 including the decommissioning sequencing; the disposition of materials to be
25 used upon decommissioning, such as landfilling, reuse, or recycling of project
26 equipment, which shall specifically delineate methods to be used for solid and
27 hazardous waste; and a schedule for completion of the decommissioning
28 activities.

29 (3) Information on equipment proposed to be salvaged, including estimated
30 salvage value of the equipment for the purpose of determining financial
31 assurance.

32 (4) Information on steps to be taken to restore the property in compliance with
33 subdivision (3) of subsection (b) of this section.

34 (5) A cost estimate for decommissioning the project and restoration of the
35 property in compliance with subdivision (3) of subsection (b) of this section.

36 (6) The proposed mechanism to satisfy the financial assurance requirements
37 established under subsection (d) of this section, including information on
38 which legal entity will establish the mechanism, when it will be established in
39 accordance with the requirements of this section, and how the Department will
40 access the funds from the mechanism if needed.

41 (d) Financial Assurance Requirement. –

42 (1) The owner of a utility-scale solar project shall establish financial assurance in
43 an amount acceptable to the Department that will ensure that sufficient funds
44 are available for decommissioning of the project and restoration of the
45 property in compliance with subdivision (3) of subsection (b) of this section,
46 even if the owner becomes insolvent or ceases to reside in, be incorporated,
47 do business, or maintain assets in the State. To establish sufficient availability
48 of funds under this section, the owner of a utility-scale solar project may use
49 insurance, financial tests, third-party guarantees by persons who can pass the
50 financial test, guarantees by corporate parents who can pass the financial test,
51 irrevocable letters of credit, trusts, surety bonds, or any other financial device,

- 1 or any combination of the foregoing, shown to provide protection equivalent
2 to the financial protection that would be provided by insurance if insurance
3 were the only mechanism used.
- 4 (2) Financial assurance shall be established by an owner of a utility-scale solar
5 project and maintained until such time as the project is decommissioned and
6 restoration of the property has been completed in compliance with this section.
7 Documentation of financial assurance established shall be submitted to the
8 Department at the time of registration and at the time of required update every
9 five years, as required by subsection (e) of this section.
- 10 (e) Registration. – Each owner of a utility-scale solar project shall register with the
11 Department and update such registration every five years. At the time of registration, or periodic
12 required update, the owner shall provide all of the following information:
- 13 (1) Identification of the owner and any other legal entity that will be responsible
14 for (i) decommissioning the project and (ii) establishment of financial
15 assurance, if applicable.
- 16 (2) Summary of project equipment that will be subject to decommissioning
17 requirements under this section, including the location, size, number, and type
18 of PV modules, as well as identification of any per- and poly-fluoroalkyl
19 substances (PFAS) associated with the project, and a determination as to
20 whether the PV modules are likely to be characterized as hazardous waste
21 upon decommissioning. The hazardous waste determination must be made in
22 compliance with rules adopted by the Department of Environmental Quality
23 or the Environmental Management Commission.
- 24 (3) Summary of project time line, including actual or anticipated initiation and
25 completion of construction, initiation of operations, and expected service life
26 of the project.
- 27 (4) Estimates of costs to decommission the project and restore the property.
- 28 (5) Proposed financial assurance mechanism to be used to meet the requirements
29 of this section, if applicable.
- 30 (6) Copies of any decommissioning plan executed, or documentation of financial
31 assurance established, pursuant to local government ordinance or agreement
32 with a landowner, prior to registration under this subsection.
- 33 (7) Any other information the Department may require.
- 34 (f) Annual List. – The Utilities Commission shall develop and maintain a list of all
35 utility-scale solar projects operating within the State and shall provide the Department with an
36 updated list annually on or before July 1 of each year.
- 37 (g) Landowner and Local Authority Not Preempted for Adoption of More Stringent
38 Requirements. – Nothing in this section shall be construed as limiting the authority of any:
- 39 (1) Local government to establish and implement requirements that are more
40 stringent than those set forth in this section for decommissioning and financial
41 assurance for utility-scale solar projects located within its jurisdiction.
- 42 (2) Landowner to enter into an agreement with an owner to lease property on
43 which a utility-scale solar project will be sited that expressly establishes
44 requirements that are more stringent than those set forth in this section for
45 decommissioning and financial assurance for utility-scale solar projects to be
46 located on the landowner's property.
- 47 (h) Fees. – The Department shall collect fees from the owner of a utility-scale solar
48 project subject to the requirements of this section at the time of registration and periodic update,
49 as required by subsection (e) of this section. Fees collected under this subsection shall be applied
50 to the Department's cost of administering the program.

1 (i) Department Report. – Information regarding implementation of the requirements of
2 this section shall be included in the annual report required under G.S. 130A-309.06(c).

3 (j) Rules Required. – The Department of Environmental Quality shall adopt rules
4 establishing criteria to set the amount of financial assurance required for utility-scale solar
5 projects as set forth in subsection (d) of this section. These rules shall consider, at a minimum,
6 the solar technology to be employed, i.e., PV, CPV, CSP, or other technology; the approximate
7 number and size of PV modules included in the solar arrays to be constructed; any ancillary
8 facilities to be constructed in association with the project; the condition of the property prior to
9 construction of a utility-scale solar project; the amount of acreage that would be impacted by the
10 proposed project; and any other factors designed to enable establishment of adequate financial
11 assurance for decommissioning and restoration on a site-by-site basis. In establishing
12 requirements for financial assurance for a utility-scale solar project, the Department shall
13 consider the salvage value of the project's equipment. The rules shall require periodic updates to
14 be provided by owners with respect to financial assurance maintained. In addition, the
15 Department shall adopt rules as necessary to implement other requirements of this section,
16 including rules to address the following matters:

17 (1) Requirements for decommissioning plans, including required information,
18 and processes for submittal and review of plans.

19 (2) Fees to be assessed upon registration.

20 (3) Any other matter the Department deems necessary.

21 **"§ 130A-309.241. Grants and incentives for recycling of solar panels.**

22 The Department of Commerce, in consultation with the Department of Environmental
23 Quality, shall identify existing incentives and grant programs that may be used to encourage
24 research and development on recycling and reuse of PV modules and to facilitate growth of the
25 State's PV module recycling and reuse industry.

26 **"§ 130A-309.242. Utility-Scale Solar Management Fund.**

27 (a) Creation. – The Utility-Scale Solar Management Fund is created as a special fund
28 within the Department. The Fund consists of revenue credited to the Fund from the proceeds of
29 the fee imposed on owners of utility-scale solar projects under G.S. 130A-309.240.

30 (b) Use and Distribution. – Moneys in the Fund shall be used by the Department to
31 implement the provisions of this Part concerning proper decommissioning of utility-scale solar
32 projects.

33 **"§ 130A-309.243. Enforcement and appeals.**

34 (a) This Part may be enforced as provided by Part 2 of Article 1 of this Chapter.

35 (b) Appeals concerning the enforcement of rules, the imposition of administrative
36 penalties, or any other action taken by the Department under authority of this Part shall be
37 governed by the provisions for appeals set forth in Part 2 of Article 1 of this Chapter."

38 **SECTION 2.(b)** G.S. 130A-309.06(c) reads as rewritten:

39 **"§ 130A-309.06. Additional powers and duties of the Department.**

40 ...

41 (c) The Department shall report to the Environmental Review Commission and the Fiscal
42 Research Division on or before April 15 of each year on the status of solid waste management
43 efforts in the State. The report shall include all of the following:

44 ...

45 (21) A report on the management of solar energy equipment pursuant to Part 2J of
46 this Article."

47
48 **DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES AND REPORT**

49 **SECTION 2.(c)** The Department of Environmental Quality shall adopt permanent
50 rules implementing the requirements of this section no later than August 1, 2025.

1 **SECTION 2.(d)** Beginning December 1, 2023, through December 1, 2025, the
2 Department of Environmental Quality shall submit quarterly reports to the Environmental
3 Review Commission and the Joint Legislative Commission on Energy Policy on implementation
4 of the requirements of this section, including program development and the status of the
5 rulemaking.

6 7 **APPLICABILITY TO EXISTING CONTRACTS**

8 **SECTION 2.(e)** Nothing in Section 2(a) of this act shall be construed to abrogate or
9 impair a contractual provision executed on or before the effective date of this act that is binding
10 on an owner, or their successors in interests, that expressly requires decommissioning and/or
11 restoration activities in direct conflict with the requirements of those sections, such as a
12 contractual provision granting a landowner the right to retain project equipment after cessation
13 of operations, as that term is defined under G.S. 130A-309.240, as enacted by Section 2(a) of this
14 act. In such case, compliance with the provisions of Section 2(a) of this act shall be required to
15 the maximum extent that decommissioning and/or restoration activities are not in direct conflict
16 with the terms of such a contractual provision.

17 18 **PUBLIC STAFF OF THE UTILITIES COMMISSION TO PROVIDE INFORMATION** 19 **CONCERNING DECOMMISSIONING COSTS FOR EXISTING UTILITY-SCALE** 20 **SOLAR PROJECTS NOT SUBJECT TO FINANCIAL ASSURANCE REQUIREMENTS**

21 **SECTION 2.(f)** The Public Staff of the Utilities Commission shall, in an effort to
22 ensure proper decommissioning of all utility-scale solar projects:

- 23 (1) Identify existing laws, which do not require ratepayer contribution or
24 governmental appropriations, that would enable recovery of the costs of
25 decommissioning for utility-scale solar projects that are not subject to a
26 financial assurance requirement pursuant to (i) Section 2(a) of this act, (ii) a
27 requirement of a local government with jurisdiction over the property on
28 which the project is sited, or (iii) a lease or other binding contract with the
29 landowner of the property on which the project is sited.
- 30 (2) In consultation with the Department of Environmental Quality as needed,
31 compile a list of all utility-scale solar projects operating within the State as of
32 the effective date of this act.

33 The Public Staff shall report the information required by this section to the General
34 Assembly no later than January 1, 2025.

35 36 **PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

37 38 **SEVERABILITY CLAUSE**

39 **SECTION 3.** If any section or provision of this act is declared unconstitutional or
40 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
41 the part declared to be unconstitutional or invalid.

42 43 **EFFECTIVE DATE**

44 **SECTION 4.** This act becomes effective as follows:

- 45 (1) Section 2(a) of this act is effective when it becomes law, except as follows:
 - 46 a. The requirements for decommissioning and registration established
47 under G.S. 130A-309.240(b) and (e), respectively, as enacted by
48 Section 2(a) of this act, become effective November 1, 2025, and apply
49 to utility-scale solar projects constructed prior to or after that date. The
50 owner of a utility-scale solar project shall register with the Department
51 as follows: (i) by November 1, 2025, or at least 90 days prior to the

- 1 commencement of construction of the project if the project is
2 constructed after November 1, 2025; and (ii) at least 90 days prior to
3 commencement of rebuild or expansion of a utility-scale solar project.
4 b. The requirements for submittal of a decommissioning plan and
5 financial assurance established under G.S. 130A-309.240(c) and (d),
6 respectively, as enacted by Section 2(a) of this act, become effective
7 November 1, 2025, and shall only apply to (i) utility-scale solar
8 projects for which applications for certificates of public convenience
9 and necessity are pending or submitted on or after the effective date of
10 this act and (ii) utility-scale solar projects that are generating solar
11 energy or are interconnected to a transmission facility on the date this
12 act becomes effective, only if the project is rebuilt or expanded, as
13 those terms are defined by G.S. 130A-309.240(a)(2) and (a)(4), after
14 the effective date of this act, in which case the project shall be subject
15 to the requirements of G.S. 130A-309.240(c) and (d). The owner of a
16 utility-scale solar project shall submit a decommissioning plan and
17 establish financial assurance (i) by November 1, 2025, or prior to
18 commencement of construction of the project if the project is
19 constructed after November 1, 2025, and (ii) prior to commencement
20 of rebuild or expansion of a utility-scale solar project.
21 (2) The remainder of this act is effective when it becomes law.